

Testimony of
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the Federal Workforce and
Agency Organization

on

“Mom, Apple Pie, and Working for America: Accountability
and Rewards for the Federal Workforce”

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Chairman Porter, Ranking Member Davis, thank you for the opportunity to present the views of NTEU members on the Administration's proposed new government wide personnel system. I must note that I think your title for the hearing, "Mom, Apple Pie, and Working for America: Accountability and Rewards for the Federal Workforce," is a little off base. In fact, NTEU has conducted a survey that shows conclusively that both Moms and Apple Pie lovers who work for the federal government are overwhelmingly opposed to the Administration's new personnel proposal. Based on these results, I would also like to take this opportunity to announce the formation of a group called Moms And Dads and other Federal Employees Determined to Stop the WFA, or MADFEDSWFA. You will be hearing more from them.

NTEU has serious concerns and objections to the Administration's proposed government wide personnel changes, which it refers to as the Working for America Act. The concerns fall into two main categories.

First, despite Administration comments to the contrary, the proposal would make numerous substantial and detrimental changes to employee rights in the areas of collective bargaining and due process appeals.

Second, the proposed pay system is unacceptable on several grounds, including that it is not fair, or transparent, or tested. Its goals are not clearly identified. Employees who perform superbly will have no reliable expectation of pay increases. It is excessively complex and will require huge increases in funding to administer. It usurps Congressional authority, giving unprecedented power and discretion to the Office of Personnel Management. Its references to holding managers accountable have no foundation in the statutory language. It will thwart, rather than promote, the teamwork necessary to advance the missions of the agencies.

In addition, since the proposal was conceived with absolutely no input from frontline employees, or managers for that matter, who are tasked with accomplishing the missions of the agencies, it does not reflect or address the most critical challenges facing federal employees, which include a lack of funding, training and consistent communication of priorities by leaders who value the input of frontline employees.

LABOR-MANAGEMENT PROVISIONS

With regard to the labor-management provisions of the Administration's proposal, I would like to highlight some of the most offensive provisions that limit current collective bargaining rights. Current law provides great latitude to agencies to act without regard to bargaining obligations in emergencies. NTEU does not object to that. However, this proposal would change the current statutory definition of emergency, broadening it to an absurd extent, to include, "any situation involving or potentially involving . . . an adverse effect on agency resources . . . an increase in agency workload . . . or any budgetary exigency caused in whole or in part by external authorities." See sec. 401, proposed amendment to 5 U.S.C. 7103(a). This definition goes well beyond what is applicable even in the new DOD and DHS systems. In addition to making virtually any situation fit under the big tent definition of emergency, the bill also expands on the emergency exemption to preclude the need to bargain when, "preparing for, practicing for, or preventing any emergency." See sec. 401, proposed amendment to 5 U.S.C. 7106(a)(2)(D). It seems to me that if you are preparing, preventing or practicing for an emergency, you are not in one. To bring

in the issue of accountability here, if a federal manager can't make each and every particular situation fit into this new emergency standard he or she should be fired.

DUE PROCESS RIGHTS

The Administration proposal limits employee due process rights in many significant ways. To note just one example, the bill sets out a new statutory standard for mitigation of penalties by the Merit Systems Protection Board. Currently, if the MSPB find that a penalty is "unreasonable" it can direct that it be changed. The bill would require the MSPB to find that a penalty was "totally unwarranted," rather than unreasonable. See section 403, proposed amendment to 5 U.S.C. 7701(c). This proposal is very similar to a provision in the DHS regulations that would have changed the MSPB mitigation standard to "wholly without justification." That provision was struck down by the U.S. District Court in *NTEU, et al. v. Chertoff*. (Civil Action No. 05-201). In that regard, the Court stated, "rather than afford a right of appeal that is impartial or disinterested, the Regulations put the thumbs of the Agencies down hard on the scales of justice in their favor." I find it hard to believe that the Administration wants to pursue this provision when one so similar has been ruled illegal.

PAY SYSTEM

The Administration's bill would expand the untested, complex and controversial DHS/DOD model government-wide before the model has even been implemented in those agencies. There is no evidence that this model will increase recruitment, retention or performance. In fact, similar models have had negative results. While bargaining unit employees represented by NTEU are not covered by a paybanding performance based system at the IRS, managers are. The Hay Group did a Senior Manager Payband (SMPB) evaluation on this system for the IRS last year. Here are some of the results: 1) 76% of covered employees felt the system had a negative or no impact on their motivation to perform their best; 2) 63% said it had a negative or no impact on the overall performance of senior managers; 3) "Only one in four senior managers agree that the SMPB is a fair system for rewarding job performance or that ratings are handled fairly under the system;" 4) "Increased organizational performance is not attributed to the SMPB."

The Administration proposal gives unprecedented authority to OPM. In addition to certifying agency plans, it will have the exclusive authority to define and adjust occupational groups and subgroups; define and adjust pay rate ranges

for those groups and define and adjust local market areas and pay supplements for those areas. There will be no judicial review on the merits of these decisions.

The proposed system will give employees no assurance that they will continue to receive annual pay adjustments needed to preserve the buying power of their federal salaries or that they will receive locality adjustments or “performance” increases, despite having performed at an outstanding level.

What we think of now as annual national adjustments go to all employees with small locality differences based on wage surveys from the 32 locality pay areas. Under the proposed system, there will be no national adjustment. Rather, OPM will determine which “rate ranges” should get increases. The proposal states, “the Director may provide different rate range adjustments for different bands and may adjust the minimum and maximum rates of a band by different percentages.” The Director also can just increase the maximum rates, leaving those at the lower steps of the rate range with no increase. An adjustment that now is limited to 32 different amounts will be open to as many different variations as the number of steps within each rate range, multiplied by the number of bands within each occupational group or subgroup, multiplied by the number of occupational groups or subgroups.

Under the current locality pay rules, all GS employees who work in the same location receive the same locality pay adjustment. Under the proposed system, the Director may establish locality adjustments “for each rate range” and “may provide different local market supplements for different career/occupational groups or for different bands within the same career/occupational group in the same local market area.” So on the performance issue, an outstanding employee could receive no locality adjustment because his or her occupation is not given an increase, or because the pay band he or she is in does not receive a locality adjustment. On the complexity issue, the different locality adjustments could reflect the number of localities, multiplied by the number of occupational groups, multiplied by the number of pay bands, multiplied by the number of rate ranges. This number would then be multiplied by the total number of variations in the national adjustment referred to above.

In addition, the Director can provide special market supplements that can vary based on locality and occupational group and subgroup.

Moving on to the performance adjustment, agencies must establish “pay pools.” “Each pay pool shall cover a defined group of employees, as determined

by the agency.” Employees are awarded “shares” that correspond to their performance ratings. “An agency may determine the distribution of funds allocated for performance pay increases among pay pools and may adjust those amounts based on overall levels of organizational performance or contribution to the agency’s mission . . . an agency may, for any pay pool, adopt a method of adjusting shares based on an employee’s position in the rate range.” Again, an outstanding employee could miss out on a performance increase because he or she is in a pay pool that the agency has determined is not contributing to the agency’s mission or because he or she is at a position in the rate range that the agency has determined will not be awarded performance increases. As far as the complexity of the performance adjustment, one must multiply the number of federal agencies by the number of pay pools within each agency, then multiply the number of shares within each pool that can be earned by each employee.

Assuming there is adequate funding to pay performance increases, which is questionable at best, performance pay shares will be based on annual ratings derived from an untested, vague performance system administered by managers who have difficulty applying the current, structured system and who do not have the confidence of those they supervise. Rating systems must have at least three levels as opposed to many agencies that currently use pass/fail to rate employees.

With more pay and other important factors tied to these ratings, managers and employees will spend more time on them. Time that NTEU believes would be better spent on frontline mission related efforts. Many agencies, including DHS and the IRS, where we represent employees are in desperate need of more frontline employees. Clearly, this proposal will require more human resource positions in each federal agency and especially in OPM. We do not believe this is the right priority for our underfunded agencies.

ACCOUNTABILITY

The Administration has stated repeatedly that this bill will hold managers accountable. Yet, I see nothing in this bill that would do so. I would be very interested in hearing specific references to provisions in the bill that will “require” management accountability as Administration officials have stated. Saying it, doesn’t make it so. We agree with the Administration that accountability is critical to a successful performance management system and we believe that accountability must start at the top. For many years the IRS and NTEU have jointly sponsored an employee survey that includes the opportunity for employees to rate the performance of their managers. Employees have become so disillusioned, seeing absolutely no action that would indicate that managers who

consistently receive low ratings face any repercussions, that NTEU this year withdrew its support for the survey. We see nothing in this proposal that will impose any consequences on managers who consistently receive low ratings from the employees they supervise.

The employees represented by NTEU want to be successful in accomplishing their agencies' missions. These are the things I believe will have the most impact on the quality of applicants and the motivation, performance, loyalty and success of federal workers.

- 1) Leadership. Rules and systems don't motivate people. Leaders do.
- 2) Opportunities for employees to have input into decisions that affect them and the functioning of their agencies. They have good ideas that management is currently ignoring.
- 3) A fair compensation system that has credibility among employees, promotes teamwork and is not administratively burdensome.

Unfortunately, I do not believe the proposal being pursued by the Administration follows these standards.

Thank you for the opportunity to appear before you today. I would be happy to answer any questions.